

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
)	
UNITED STATES OF AMERICA)	
)	
v.)	No. 16-10094-LTS
)	
ROSS MCLELLAN,)	
Defendant)	
_____)	

**DEFENDANT ROSS MCLELLAN’S NOTICE OF SUPPLEMENTAL AUTHORITY IN
SUPPORT OF HIS MOTION FOR NEW TRIAL**

Now comes the defendant Ross McLellan and respectfully notifies the Court of supplemental authority relevant to his pending Motion for New Trial. Dkt. 495. The Ninth Circuit recently issued an opinion supporting the defense contention that half-truths are subject to the legal requirements for omissions, *i.e.* a duty to disclose which is absent herein, rather than, as the jury was instructed, subject to the principles governing affirmative misrepresentations and lies. *See United States v. Spanier*, No. 17-50128, 2018 WL 3615894, at *1 (9th Cir. July 30, 2018) (unpublished) (“When the government bases a fraud charge on material non-disclosures, the trial court must instruct the jury that a non-disclosure can only support a fraud charge when the defendant has a duty to disclose the omitted information. That rule is not limited to ‘pure omissions’ cases, where the allegations of fraud are only based on non-disclosures.” (citation and footnote omitted)). Notably, this opinion reversed the primary authority relied upon by the government on the omissions issue. *See* Dkt. 501 at 17 (citing *United States v. Spanier*, No. 16-

CR-1545, 2017 WL 1336998, at *2 (S.D. Cal. Apr. 7, 2017)).

Respectfully submitted,

Ross McLellan
By his Attorneys,

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Dated: August 1, 2018

CERTIFICATE OF SERVICE

I, Martin G. Weinberg, hereby certify that on this date, August 1, 2018, a copy of the foregoing document has been served via Electronic Court Filing system on all registered participants.

/s/ Martin G. Weinberg
Martin G. Weinberg